

ENTERED

September 15, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

ENRIQUE HUERTA,

Petitioner,

VS.

C. HOWARD,

Respondent.

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CIVIL ACTION NO. 7:21-CV-00143

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is Movant Enrique Huerta's request for "compassionate release" or modification of his sentence (the "Request") raised through a form petition for writ of habeas corpus under 28 U.S.C. § 2241. On May 27, 2021, the Magistrate Court issued the Report and Recommendation, recommending that the Request be construed as a motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A), that the Request be docketed as a motion for compassionate release in *United States v. Huerta*, 7:18-CR-0319-2, that the Government be ordered to submit a response to the motion for compassionate release, that the Request be denied without prejudice insofar as Huerta intends on seeking relief under § 2241, and that this civil action be closed. Huerta also filed a Motion for Appointment of Counsel, which the Magistrate Judge recommended be denied as moot. Huerta has filed timely objections to the Magistrate Court's Report and Recommendation.

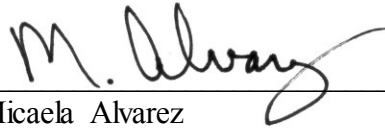
Pursuant to 28 U.S.C. § 636(b)(1)(c), the Court has made a de novo determination of those portions of the report to which objections have been made. As to those portions to which

no objections have been made, in accordance with Federal Rule of Civil Procedure 72(b), the Court has reviewed the report for clear error.¹

Having thus reviewed the record in this case, the parties' filings, and the applicable law, the Court adopts the Report and Recommendation in part. The Clerk of Court is **DIRECTED** to docket the Request as a motion for compassionate release in *United States v. Huerta*, 7:18-CR-0319-2. Insofar as Huerta seeks relief under § 2241, the Request is hereby **DENIED** without prejudice and it is **ORDERED** that this civil action be **CLOSED**. Finally, Huerta's Motion for Appointment of Counsel is **DENIED** as **MOOT**.

IT IS SO ORDERED.

DONE at McAllen, Texas, this 15th day of September, 2021.



Micaela Alvarez
United States District Judge

¹ As noted by the Fifth Circuit, “[t]he advisory committee’s note to Rule 72(b) states that, ‘[w]hen no timely objection is filed, the [district] court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’ ” *Douglas v. United States Service Auto. Ass’n*, 79 F.3d 145, 1420 (5th Cir. 1996) (quoting Fed. R. Civ. P. 72(b) advisory committee’s note (1983)) *superseded by statute on other grounds by* 28 U.S.C. § 636(b)(1), *as stated in ACS Recovery Servs., Inc. v. Griffin*, No. 11-40446, 2012 WL 1071216, at *7 n. 5 (5th Cir. April 2, 2012).